IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1043 of 2004
In
SPECIAL CIVIL APPLICATION No. 10223 of 1999

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT
&
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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STATE OF GUJARAT & 2 - Appellant(s)
Versus
MB PHANSE - Respondent(s)

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Appearance :
MR SUNIT SHAH GP with Ms. Mini Nair, AGP for Appellants
MR JT TRIVEDI with BJ Trivedi for Respondent

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
And

HONOURABLE MS.JUSTICE H.N.DEVANI

1st November, 2007

ORAL JUDGMENT *(Per :- HONOURABLE MS. JUSTICE R.M.DOSHIT)*

This Appeal under Clause 15 of the Letters

Patent preferred by the State of Gujarat arises from the judgment and order dated 3rd February, 2005 passed by the learned Single Judge in Special Civil Application No. 10223 of 1999. The respondent is the *writ* petitioner.

The respondent [hereinafter referred to as, "***the writ petitioner***"] joined the judicial services in the State of Gujarat on 3rd September, 1973 as a District Judge. At the time of retirement from service on 31st October, 1983, he was the Additional Principal Judge, City Civil Court, Ahmedabad. On 24th June, 1985, he was appointed as a Member of the Gujarat Civil Services Tribunal and rendered service as such till 13th October, 1990. The *writ* petitioner claimed that his service as member of the Tribunal from 24th June, 1985 to 13th October, 1990 and the previous service as the judicial officer of the State be treated as one service for the purpose of computation of pension. The said request made by the *writ* petitioner came to be rejected by the State Government. Feeling aggrieved, the writ petitioner preferred above Special Civil Application No. 10223 of 1999 before this Court.

The petition was contested by the State Government. The learned Single Judge relied upon Rule 327 of the Bombay Civil Services Rules, 1959 [hereinafter referred to as, " ***the BCSR***"] and held that the appointment of the *writ* petitioner as member of the Tribunal was reemployment under the State Government. The second service as member of the Tribunal was, for the purpose of computation of pension, required to be combined with the previous service and whole service be treated as one service. Accordingly, the learned Single Judge has directed that, "***..the services rendered by the petitioner as Member of the Tribunal is to be included while calculating his total pensionable service, the only thing which is required to be done is that the amount paid by way of Government contribution i.e., Rs. 41,192=00 be adjusted towards arrears of pension, payable to the petitioner under this order.***" Feeling aggrieved, the State Government has preferred the present petition.

We are informed at the bar that the above referred direction issued by the learned Single Judge has been implemented. The pension payable to the *writ*

petitioner has been calculated in accordance with the direction issued by the learned Single Judge. The *writ* petitioner is in receipt of the revised pension in consonance with the aforesaid direction.

In view of passage of time and the fact that the writ petitioner has retired from service as far back as in the year 1983 and he is now of advanced age; irrespective of the merit and correctness or otherwise of the order of the learned Single Judge, we do not intend to interfere with the order of the learned Single Judge, thereby unsettling the pension which is being received by the *writ* petitioner for several years now.

In above view of the matter, the Appeal is dismissed. The parties will bear their own cost.

{Ms.H.N Devani, J.} {Ms. R.M Doshit, J.}

*Prakash**